



US Army Corps  
of Engineers

Sacramento District  
1325 J Street  
Sacramento, CA 95814-2922

# Public Notice

Public Notice Number: 200150422

Date: January 4, 2002

Comments Due: February 4, 2002

In reply, please refer to the Public Notice Number

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## TO WHOM IT MAY CONCERN:

**SUBJECT:** This Public Notice serves as the second public notice soliciting comments on the proposed LOP procedures. In response to numerous requests, the comment period is extended to February 4, 2002. The Corps is soliciting additional comments regarding 401 water quality certification for the LOP procedures.

Certification of the proposed LOP, in accordance with Section 401 of the Clean Water Act, has been requested from the Utah Division of Water Quality. The Utah Division of Water Quality intends to issue certification, provided that projects authorized by the proposed LOP procedures do not violate applicable water quality standards. Projects are usually certified where the project may create diffuse sources (nonpoint sources) of wastes which will occur only during the actual construction activity and where best management practices will be employed to minimize pollution effects. Written comments on water quality certification should be submitted to Mr. William O. Moellmer, Utah Division of Water Quality 288 North 1460 West, P.O. Box 144870, Salt Lake City, Utah 84114-4870 on or before February 4, 2002.

As described in our first public notice dated November 4, 2001, the Sacramento District intends to issue Letters of Permission (LOP) to authorize certain fill activities pursuant to Section 404 of the Clean Water Act that have overall minor impact to the aquatic ecosystem. The LOP authorization is an expedited process for a standard permit, where a decision to issue authorization is made within 45 days.

Activities that potentially qualify for processing through LOP procedures are fill activities which do not qualify for existing nationwide permit(s) or other general permit(s). These fill activities have minor impacts therefore do not warrant more detailed processing. The LOP will be used only for those projects where the applicant performs a thorough pre-application coordination among the regulatory and resource agencies.

**AUTHORITY:** Section 404 of the Clean Water Act (33 USC 1344) in accordance with "Processing of Department of the Army Permits" 33 CFR 325.2(e)(1)(ii).

**LOCATION:** The State of Utah.

**PURPOSE:** To provide an alternate, abbreviated permitting process for those applicants who perform effective pre-application coordination and formulate projects that comply with the Section 404(b)(1) Guidelines, other program objectives and include effective mitigation for unavoidable impacts.

**COMMENTS SOLICITED:** The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of issuing the LOP procedures. Commenters are invited to submit written comments on or before **February 4, 2002**. The decision whether to issue the Letter of Permission procedures will be based on an evaluation of the probable impact including cumulative impacts of the proposal on the public interest. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing.

If **additional information** is required, please contact Ms. Nancy Kang at our Utah Regulatory Office, 533 West 2600 South, Suite 150, Bountiful, Utah 84010, telephone 801-295-8380, extension 14, or email [nkang@spk.usace.army.mil](mailto:nkang@spk.usace.army.mil).

Written comments are due **February 4, 2002**, and should reference Public Notice No. 200150422. Comments may be mailed to the US Army Engineer District-Sacramento, Regulatory Branch (CESPK-CO-R), 1325 J. Street, Sacramento, California 94814-2922 **and** to the U.S. Army Corps of Engineers, Intermountain Regulatory Section, ATTN: Nancy Kang, 533 West 2600 South, Suite 150, Bountiful, Utah 84010.

Michael J. Conrad, Jr.  
Colonel, Corps of Engineers  
District Engineer

Attachments

**DEFINITIONS:** For the purpose of the LOP, the following definitions are applicable:

**404(b)(1) Guidelines** - These Guidelines (40 CFR 230.10(a)) require the applicant to demonstrate that their proposed fill into waters of the United States is unavoidable and the least environmentally-damaging practicable alternative for the aquatic ecosystem that achieves the basic project purpose. For unavoidable impacts, the guidelines also require appropriate and practicable mitigation. This could include avoiding impacts, taking steps to minimize impacts, and compensating for any remaining unavoidable impacts to the extent appropriate and practicable.

**Standard Permit** - Permits are issued following a public notice and full public interest review of the permit application, which includes distributing a public notice to all known interested persons, and an evaluation of all comments and information received. Our goal is to complete processing of a standard permit within 60-90 days, but no later than 120 days, unless additional time is needed to extend the comment period, conduct a public hearing, prepare environmental documents, or comply with other Federal laws.

**Letter of Permission** - A type of Standard Permit issued through an abbreviated processing procedure, which includes coordination with Federal and state fish and wildlife agencies as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without publishing of an individual public notice. Processing time is normally 45 days or less.

**Mitigation** - Mitigation includes avoiding impacts, taking steps to minimize impacts and compensating for any remaining unavoidable impacts to the extent appropriate and practicable. For unavoidable impacts, compensation required by the Corps will be based on a consideration of regional aquatic resource requirements, particularly needs of immediate and nearby watersheds.

**Mitigation Plan** - The plan describes in detail the physical and biological characteristics of the project, and how the project will be established and operated. At a minimum, the plan needs to use Sacramento District's *Habitat Mitigation Monitoring Guidelines* and include baseline information, goals of the mitigation, work/construction plan, success criteria, monitoring plan and schedule, weed control measures, contingency plan, site protection, financial assurances, and responsible parties for long-term maintenance.

**Nationwide Permit** - A type of permit issued for categories of similar activities that have minimal impacts. Specific nationwide permits are available to authorize specific road crossings, utility line crossings, boat ramps, mooring buoys, outfall structures, etc. The permit is available for use throughout the nation. The use of nationwide permits can normally be verified within 45 days.

**Section 401 Water Quality Certification** - In accordance with Section 401 of the Clean Water Act, any applicant requiring a Corps permit to fill into waters of the United States must request State certification that the proposed activity will not violate State and Federal water quality standards. The certification is based on a finding made by Utah Division of Water Quality, that the proposed Section 404 discharge will comply with all pertinent water quality standards. Any requirements of Section 401 Water Quality Certification of waiver of certification will be a condition of the LOP authorization.

**Waters of the United States** - all waters such as lakes, rivers, streams (including intermittent and ephemeral streams), wetlands, sloughs, wet meadows, playa lakes, natural ponds, and tributaries of these waters, the use, degradation, or destruction of which could affect interstate or foreign commerce.

**PROPOSED SECTION 404  
LETTER OF PERMISSION (LOP) PROCEDURE**

Pre-application Procedure

The applicant must complete pre-application, coordination with the Corps, the U.S. Environmental Protection Agency (USEPA), The U.S. Fish and Wildlife Service (USFWS), the Utah Division of Water Quality (UDWQ), the Utah Division of Wildlife Resources (UDWiR), the Utah Division of Water Rights (UDWaR), the Utah State Historic Preservation Office (SHPO) and if appropriate, Utah Division of Forestry, Fire and State Lands and/or the Utah Division of Oil, Gas and Mining. In addition, if the project is in-stream and within one mile of a State bridge or culvert or within Utah Department of Transportation (UDOT) right-of-way, the applicant must contact UDOT.

The applicant can meet with the agencies separately or in small groups, consult by telephone, or schedule a pre-application meeting held one day a month, held at the Corps offices. A written record of the proceedings must be provided to the Corps documenting substantive issues discussed, agency recommendations and any pertinent conclusions. If the applicant chooses to participate in a pre-application meeting, the following information should be provided to the agencies at least two weeks prior to the meeting:

- a) A verified delineation of Waters of the United States for the project area.
- b) A site location and plan view of the project areas and acreage to be impacted.
- c) A draft report addressing the Section 404(b)(1) Guidelines.
- d) If unavoidable impacts occur to wetlands, a draft mitigation plan.
- e) When appropriate, a cultural resources inventory for the project area.

The Corps will make an initial determination that the project can qualify for the LOP Process based on a preliminary determination that the project impacts are minor, that the project can meet 404(b)(1) guidelines, and that individual permit processing with Public Notice review would not result in a substantive change in the proposed project or mitigation.

Information Needed for Application

- 1. A completed Department of the Army application form *Eng Form 4345* or Joint Permit Application form.
- 2. A complete project description which includes:
  - a. Pre-construction photographs of the project site;
  - b. A site location map and view of the project showing areas and acreage to be impacted;
  - c. Location coordinates: latitude/longitude or UTM's
  - d. Volume, type and source of material to be placed into Waters of the United States;
  - e. Total area of Waters of the United States to be directly and indirectly affected;
  - f. A verified delineation of Waters of the United States located in the project area;
  - g. A description of habitat, including plant community, located in the project area;

- h. A description of methods to avoid, minimize, or mitigate adverse impacts to water quality or aquatic function at the project site including best management practices used during construction to control siltation and erosion.
  - i. Any other information pertinent to the wetlands, stream, or water body involved;
  - j. Proposed construction schedule.
3. A record of pre-application coordination with the Corps, USEPA, USFWS, UDWQ, UDWiR and UDWaR. UDOT must be included if the project is in-stream and within one mile of a State bridge or culvert or within UDOT right-of-way. If coordination was not accomplished with any of the agencies, the applicant must show due effort to meet with the agency and explain why such coordination was not attained. The record needs to document comments and concerns made by each agency during pre-application consultation.
4. A discussion of how each agency comment/concern was addressed.
5. Section 404(b)(1) Guidelines alternatives analysis.
6. A mitigation plan that effectively address the unavoidable impacts to waters of the U.S. and the program goal of no net loss of wetlands. See "Mitigation Plan" under definitions section.
7. Local approvals or other evidence that the project has been reviewed by the appropriate local governmental body and has been found to be consistent with state and local land use plans and policies, particularly state and local wetland policies.
8. Appropriate surveys, inventories or reports that will allow the Corps to make a determination of the effect of the project and complete necessary consultation to comply with the Endangered Species Act and the National Historic Preservation Act.

### Processing Procedures

1. The applicant will provide the Corps and the review agencies a complete application. The Corps will review the applicant's submission and assign an action ID number.
2. If the Corps believes that the application does not meet the LOP requirements, the Corps will notify the applicant and the agencies via FAX or telephone that a standard permit will be processed. The time to make this decision will not exceed 45 calendar days.
3. If the application qualifies for the LOP process, the Corps will notify the applicant and agencies by FAX, telephone or e-mail of the application ID number and request the agencies to provide comments within 20 calendar days.

Agencies will provide comments to the Corps within 20 calendar days. The SHPO will provide comment within 30 calendar days. If an agency receives a notification of an

assigned ID Number but has not received the application, the agency should immediately notify the Corps. The Corps will provide the information and then allow the agency the full 20 calendar days from that point in time to comment. "No objection" comments may be provided by phone, but substantive comments should be provided and confirmed by FAX or letter.

4. The Corps will review the comments received and make a determination within 25 calendar days after close of the 20-day comment period. If the project meets the criteria for LOP authorization, an LOP will be issued. At any time during the process, the Corps can determine that the project does not meet all of the criteria for the LOP, and will immediately terminate the LOP process. In this instance, the Corps will write a Public Notice and process the application under full standard permit procedures.

5. Section 401 Water Quality Certification or waiver must be obtained from UDWQ. An LOP will not be issued until Section 401 certification or a waiver is obtained.

#### ADDITIONAL APPLICANT INFORMATION:

The following documents are available from the Sacramento District Regulatory Program Website at <http://www.spk.usace.army.mil/cespk-co/regulatory>

Regl 01-01 Guidance for the Establishment and Maintenance of Compensatory Mitigation Projects  
Department of the Army Form *Eng Form 4345*  
Habitat Mitigation and Monitoring Guidelines  
Suggestions for a Successful Pre-Application Meeting  
Wetland Delineation Information and Suggestions  
Wetland Consultants  
Our Working Partners

#### U.S. Army Corps of Engineers

Utah Regulatory Office  
533 West 2600 South, Ste. 150  
Bountiful, Utah 84010  
(801) 295-8380  
Attn: Nancy Kang

Iron, Garfield, Washington, Kane Co.  
St. George Regulatory Office  
321 North Mall Dr. Ste. L-101  
St. George, UT 84790-7314  
(435) 986-3979  
Attn: Grady McNure

San Juan Co.  
Durango Regulatory Office  
278 Sawyer Dr., Unit #1  
Durango, CO 81303-7995  
(970) 375-9452  
Attn: Lesley McWhirter

Dagget, Uintah and Grand Co.  
Colorado Gunnison Basin Regulatory Office  
402 Rood Avenue, Room 142  
Grand Junction, CO 81501-2563  
(970) 243-1199

## AGENCY ADDRESSES FOR PREAPPLICATION COORDINATION

U.S Fish and Wildlife Service

Utah Field Office  
2369 West Orton Circle  
West Valley City, Utah 84119  
(801) 975-3330  
Attn: Lucy Jordan

Environmental Protection Agency

Region VIII - Wetlands Section  
(8EPR-EP)  
999 Eighteenth Street, Suite 300  
Denver, Colorado 80202-2466  
(303) 312-6794  
Attn: Dave Ruiter

State Historic Preservation Office

Utah State Historic Preservation Office  
300 Rio Grande  
Salt Lake City, Utah 84101-1182  
(801) 533-3555  
Attn: James Dykmann

Utah Division of Water Quality

288 North 1460 West  
PO Box 144870  
Salt Lake City, Utah 84114-4870  
(801) 538-6146  
Attn: William Moellmer

Utah Division of Water Rights

1594 W. North Temple, Suite 220  
PO Box 146300  
Salt Lake City, Utah 84114-6300  
(801) 538-7377 or 7404

Utah Division of Oil, Gas & Mining

1594 W. North Temple, Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801  
(801) 538-5340 (for referral)

Utah Division of Forestry, Fire & State  
Lands

1594 W. North Temple, Suite 3520  
PO Box 145703  
Salt Lake City, Utah 84114-5703  
(801) 538-5495  
Attn: Karl Kappe

Utah Division of Wildlife Resources

Wetlands Section  
1594 W. North Temple, Suite 2110  
PO Box 146301  
Salt Lake City, Utah 84114-6301  
(801) 538-4752

For counties of Box Elder, Cache, Rich, Weber,  
Morgan, Davis and Summit:

Northern Region, Wildlife Resources  
515 East 5300 South  
Ogden, Utah 84405  
(801) 476-2776  
Attn: Rory Reynolds

For counties of Tooele, Salt Lake, Utah, west Wasatch, Sanpete and  
Juab:

Central Region, Wildlife Resources  
1115 North Main  
Springville, Utah 84663  
(801) 491-5678  
Attn: Doug Sakaguchi

For counties of Duchesne, east Wasatch, Daggett, Uintah and NW  
Grand:

Northeast Region, Wildlife Resources  
152 East 100 North  
Vernal, Utah 84078  
(435) 789-3103  
Attn: Jack Lytle

For counties of Millard, Kane, Sevier, Beaver, Piute, western Wayne  
and Garfield, Iron, and Washington:

Southern Region, Wildlife Resources  
1470 North Airport Road, Suite 1  
PO Box 606  
Cedar City, Utah 84720  
(435) 865-6111  
Attn: Bruce Bonebrake

For counties of Carbon, Emery, Grand, eastern Wayne, eastern  
Garfield, and San Juan:

Southeastern Region, Wildlife Resources  
475 West Price River Drive, Suite C  
Price, Utah 84501  
(435) 636-0267  
Attn: Derris Jones

Utah Department of Transportation

Central Environmental Division  
4501 South 2700 West  
Salt Lake City, Utah 84114-8450  
(801) 965-4564  
Attn: Jerry Chaney